

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

Honorable Christopher D. Jaime  
1200 I Street, Suite 200  
Modesto, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: November 9, 2021**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Modesto, California

**November 9, 2021 at 1:00 p.m.**

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1. [21-90408](#)-B-13 SILVIA HERNANDEZ OBJECTION TO CONFIRMATION OF  
[AP-1](#) Chinonye Ugorji PLAN BY WELLS FARGO BANK,  
**Thru #2** NATIONAL ASSOCIATION  
10-13-21 [[14](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, objecting creditor Wells Fargo Bank, National Association holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$17,207.06 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, Debtor's Schedule J shows zero expenses for home maintenance, repairs, and upkeep over the life of the plan. Debtor shall explain why these expenses are not included or amend Schedule J to reflect the Debtor's expenses.

The plan filed August 31, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

**November 9, 2021 at 1:00 p.m.**

2. [21-90408](#)-B-13 SILVIA HERNANDEZ  
[RDG](#)-1 Chinonye Ugorji

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-14-21 [[17](#)]

### **Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

Debtor has claimed exempt jewelry totaling \$2,500.00 utilizing C.C.P. §703.140(b)(4). Debtor has exceeded the allowable amount under C.C.P. §703.140(b)(4) since the allowable aggregate amount is \$1,750.00.

The plan filed August 31, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

3. [21-90082](#)-B-13 TRACY BELL  
[MJD](#)-1 Matthew J. DeCaminada  
**Thru #4**

OBJECTION TO CLAIM OF DISCOVER  
BANK, CLAIM NUMBER 2  
10-7-21 [[27](#)]

### **Final Ruling**

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, the claimant is not required to file written opposition to the objection. Nevertheless, based on the evidence before the court included in the proof of claim at issue, the court has determined that further briefing and oral argument are not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h).

The court's decision is to overrule the objection to Claim No. 2-3 of Discover Bank.

Debtor requests that the court disallow the claim of Discover Bank ("Creditor"), Claim No. 2-3. The claim is asserted to be in the amount of \$15,160.33. The Debtor asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach.

According to the Creditor's statements in the proof of claim, the last transaction on the account occurred on April 28, 2015, which is more than four years before this chapter 13 case was filed on March 1, 2021; however, the proof of claim also reflects that the last payment was received on or about June 8, 2021, and the Chapter 13 Trustee filed a response stating that \$28.23 has been paid. Payment on a time-barred debt will not revive the limitations period to recover the debt. See Cal. Civ. Pro. Code § 360;<sup>1</sup> *Pariot v. Portfolio Recovery Assoc., LLC*, 2019 WL 2635586 at \*3 (E.D. Cal. June 25, 2019). In other words, if the last transaction on this debt was April 28, 2015, the debt would remain time-barred despite the subsequent payment.

Here, however, the proof of claim also includes a timely and otherwise valid state court default judgment on the debt which was entered on September 28, 2017. Creditor asserts that its claim is based on the judgment, not the credit card contract. Entered against the Debtor in September 2017, the judgment was enforceable when this case was filed.

Since the debt is not time-barred based on the evidence before the court, the objection is overruled.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

The court will issue an order.

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<sup>1</sup>Section 360 states as follows:

No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this title, unless the same is contained in some writing, signed by the party to be charged thereby, provided that any payment on account of principal or interest due on a promissory note made by the party to be charged shall be deemed a sufficient acknowledgment or promise of a continuing contract to stop, from time to time as any such payment is made, the running of the time within which an action may be commenced upon the principal sum or upon any installment of principal or interest due on such note, and to start the running of a new period of time, but no such payment of itself shall revive a cause of action once barred.

4. [21-90082](#)-B-13 TRACY BELL OBJECTION TO CLAIM OF CACH,  
[MJD](#)-2 Matthew J. DeCaminada LLC, CLAIM NUMBER 7  
10-7-21 [[31](#)]

**Final Ruling**

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, the claimant is not required to file written opposition to the objection.

The court's decision is to overrule as moot the objection to Claim No. 7-1 of CACH, LLC.

Creditor CACH, LLC filed a withdrawal of its claim on October 19, 2021. Therefore, the Debtor's objection to Claim No.7-1 of CACH, LLC is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.